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**IDAHO PERSONNEL COMMISSION**

**STATE OF IDAHO**

DEPARTMENT OF TRANSPORTATION,	)	
	)	IPC NO. 97-05
Appellant,	)	
	)	<b>DECISION AND ORDER ON</b>
vs.	)	<b>PETITION FOR REVIEW</b>
	)	
IDAHO PERSONNEL COMMISSION,	)	
	)	
Respondent.	)	
	)	

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THIS MATTER CAME ON FOR HEARING ON THE PETITION FOR REVIEW on Friday, January 16, 1998. Appellant Department of Transportation (Department) was represented by Steven Parry, Deputy Attorney General; Respondent Idaho Personnel Commission (Commission) was represented by Rinda Just, Deputy Attorney General. Commission members Sherry Dyer, Peter Boyd, and Don Miller participated in the decision; Commissioner Ken Wieneke did not participate in the decision.

The petition for review involves the hearing officer's decision, dated October 10, 1997, denying the Department's petition to intervene in the matter of Gill v. Idaho Personnel Commission, Case No. 97-05. We AFFIRM.

## **I.**

### **BACKGROUND AND PRIOR PROCEEDINGS**

By its petition for review, Department seeks an order of this Commission allowing it to intervene in the matter of Gill v. Idaho Personnel Commission, Case No. 97-05 (Gill).

In Gill, the employee challenged the decision of Richard J. Hutchison, which required that he obtain a professional engineering license or that his position be reclassified to a position that would not require a professional engineering license. Mr. Gill challenged the Hutchison decision and it was during the course of Gill's appeal that the Department sought to intervene. The hearing officer denied the Department's request and subsequently dismissed Mr. Gill's appeal.

Mr. Gill has challenged the hearing officer's order of dismissal with the filing of a timely notice of appeal. He has chosen to represent himself in this regard. That appeal will be the subject of a hearing by the Commission during its February 13, 1998 meeting.

The Department also appealed the hearing officer's decision. It is only the Department's petition for review of the hearing officer's denial of its motion to intervene which is being decided here.

## **II.**

### **ISSUE**

The issue before the Commission with respect to the Department's petition for review is whether the hearing officer erred in denying the Department's motion for intervention.

### III.

#### DISCUSSION

During oral argument of this appeal, the Department expressed its concern that Mr. Gill, appearing *pro se*, might not be making the preferred legal arguments. In briefing and during argument, the Department detailed the arguments which it would make, if allowed to intervene. The Department asks that the Commission either remand the case back to the Commission's hearing officer for development of a complete factual record (on the underlying matter involving Mr. Gill's "demotion") or that the Commission enter an order requiring that Mr. Gill be allowed to remain in his previous employment situation.

The Department has not, either in its brief in support of petition for review or in the arguments presented during the January, 1998 hearing, specifically addressed the issue of whether the hearing officer erred in denying the motion for intervention. The relief requested in the Department's brief does not pertain to the denial of the Department's motion to intervene; the Department's requested relief focuses on the issues underlying Mr. Gill's petition for review.

The Idaho Administrative Procedure Act requires the promulgation of rules specifying the procedures and standards for intervention in a contested case such as the one before the Commission. Idaho Code § 67-5206(4)(b). Rules 350 through 355 of the Idaho Administrative Procedure Act specifically address the issues surrounding intervention. Those rules make it clear that intervention is not a matter of right; intervention depends upon the issuance of an order by a hearing officer who has determined that the intervenor has a direct and substantial interest in the proceeding in which intervention is sought. Accordingly, petitions to intervene may be denied where, in the opinion of the hearing officer, there is no substantial interest in the proceedings on the part of the party seeking intervention.

In this case, the Department has not pointed to any substantial interest which it holds in the outcome of the Gill appeal; the Department appears to assert Mr. Gill's interest in the outcome of the appeal as the basis for its petition. In denying intervention, the hearing officer reinforced the concept that the real party in interest is Mr. Gill and that the Department has not demonstrated that it holds any substantial interest to be protected here.

The Department has introduced the arguments which it might have made had the hearing officer granted the original petition and allowed intervention. The Department has clearly stated the arguments which it would have liked Mr. Gill to make in previous proceedings. The Department suggests the arguments could have been raised during the discussions which led to the development of new engineering classifications. The Department seeks an order remanding the entire proceeding to allow it to make all of those arguments for Mr. Gill. The Department has not, however, demonstrated that the hearing officer erred in denying the Department's request to intervene.

#### **IV.**

#### **CONCLUSION**

ACCORDINGLY, for the reasons set out above, the October 10, 1997 Order Denying Motion to Intervene in Case No. IPC 97-05 is hereby AFFIRMED.

V.

**STATEMENT OF APPEAL RIGHTS**

Either party may appeal this decision to the District Court. A notice of appeal must be filed in the District Court within forty-two (42) days of the filing of this decision. Idaho Code § 67-5317(3). The District Court has the power to affirm, or set aside and remand the matter to the Commission upon the following grounds, and shall not set the same aside on any other grounds:

- (1) That the findings of fact are not based on any substantial, competent evidence;
- (2) That the Commission has acted without jurisdiction or in excess of its powers;
- (3) That the findings of fact by the Commission do not as a matter of law support the decision. Idaho Code § 67-5318.

DATED this 13th day of February, 1998.

BY ORDER OF THE  
IDAHO PERSONNEL COMMISSION

/s/ \_\_\_\_\_  
Sherry Dyer, Chair

/s/ \_\_\_\_\_  
Peter Boyd

/s/ \_\_\_\_\_  
Don Miller

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing DECISION AND ORDER ON PETITION FOR REVIEW in Department of Transportation v. Idaho Personnel Commission, IPC No. 97-05, was delivered to the following parties by the method stated below on the 13th day of February, 1998.

**STATEHOUSE MAIL**

Steven Parry, Deputy Attorney General  
Department of Transportation  
Statehouse Mail

Rinda Just, Deputy Attorney General  
Idaho Personnel Commission  
Statehouse Mail

/s/ \_\_\_\_\_  
Val Rodriguez